

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86 (18) S
Sales Tax
May 5, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850604A

On June 4, 1985, a Petition for Advisory Opinion was received from SYDA Foundation, County Road #52, Brickman Road, South Fallsburg, New York 12779.

The issue raised is whether amounts received by Petitioner for providing meals in conjunction with its religious activities are subject to New York State and local sales and use tax. This issue arises within the context of an audit of Petitioner by the Audit Division of the Department of Taxation and Finance.

Petitioner states in its petition that it is a not-for-profit corporation which has been recognized by the Internal Revenue Service as exempt from tax under section 501(c)(3) of the Internal Revenue Code. Petitioner states that its purposes are exclusively religious and charitable.

Petitioner serves specially prepared meals in conjunction with its daily religious services. Petitioner states that a person attending one of the Foundation's daily programs who wishes to partake of such meals may do so without charge. Petitioner indicates that participants may make a donation for the meal but such donation is not mandatory. Petitioner maintains that the voluntary nature of such donations is evidenced by the fact that some persons eat without making a donation.

Pursuant to regulation section 901.3(a), the Audit Division has disputed Petitioner's statement of facts. The Audit Division contends that the funds received by Petitioner are actually amounts paid as consideration for the meals received. The Audit Division points to fiscal reports of the Petitioner which indicate the number of meals furnished per month and standard prices charged per meal. The Audit Division also points to guest checks issued by Petitioner for each meal for which a donation is made as additional proof of its contention. The guest checks appear to indicate that standard prices were paid for breakfast, for lunch and for dinner and that all "donations" actually paid for breakfast were of exactly the same amount, as were the "donations" for lunch and for dinner.

Pursuant to regulation section 901.3(c), the comments of the Audit Division were provided to the Petitioner. In response to the comments of the Audit Division, Petitioner restated its position that the payments were not consideration for the meals and were not a prerequisite to partaking of meals.

Petitioner stated further that:

- "1. SYDA Foundation published suggested donation list in response to repeated inquiries from contributors as to the amount that would be appropriate to

reimburse SYDA by way of donation for the meals they would be eating

2. A donation is (sic) any amount is not a pre-requisite to partaking of the food provided free of charge, but is solicited from persons not residing on the premises.
3. Donations for meals are never even solicited from persons residing on the premises.
4. The suggested donation amounts are based on the estimates of the actual cost of providing the meals and are solicited only as a method of reimbursing SYDA Foundation for such costs from a donating party who wishes to do so.
5. Meals are not automatically refused to persons, who in good faith desire to participate in the religious practice associated with the meals, based on whether or not such persons desires (sic) to make a donation."

Section 1105(d) of the Tax Law imposes a tax upon: "The receipts from every sale of... food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state.... "

Section 1116(a) of the Tax Law provides that sales by organizations formed exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes are generally exempt from tax. However, section 1116(b)(2) of the Tax Law provides that sales of food and drink in or by a restaurant operated by such an organization are subject to tax under section 1105(d) notwithstanding the provisions of section 1116(a) of the Tax Law.

Section 1101(a)(3) of the Tax Law defines "receipts" as "the amount of the sales price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise.... "

Based upon the information supplied by Petitioner, it must be concluded that the amounts paid to Petitioner by participants were paid as consideration for the meals furnished. The participants paid these amounts to compensate Petitioner for the cost of the meals. The participants would not have paid these amounts but for the furnishing of the meals by Petitioner. Furthermore, Petitioner solicited these payments from participants and posted a price list of amounts to be paid. It makes no difference that Petitioner only intended to recover the cost of providing the meals. There is no requirement in the Tax Law that a vendor intend to make a profit before his sales become subject to tax. (See: Sperry Rand Corporation v. State Tax Commission 99 Misc 2d 716 (1977); Wayfarer Ketch Corp., Decision of the State Tax Commission, June 11, 1982, TSB-H-82(107)S).

TSB-A-86 (18) S
Sales Tax
May 5, 1986

Accordingly, all amounts received by Petitioner with respect to its furnishing of meals to participants are receipts subject to tax under section 1105(d) of the Tax Law upon which Petitioner is required to collect tax.

DATED: May 5, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.